vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.478 OF 2005
CONNECTED WITH
COMPANY APPLICATION NO.343 OF 2005

In the matter of sections 433 and 434 of the Companies Act, 1956
And
In the matter of amalgamation of Dicitex Synthetics Private Limited with Dicitex Furnishings Private Limited

Dicitex Synthetics Private Ltd. ... Petitioners

Mr.C.U. Singh with Mr.S.Purohit i/b K.D. Abhichandani for Petitioners

Mr.C.J. Joy with R.C. Master i/b T.C. Kaushik for Regional Director

Mr.S.C. Gupta, Official Liquidator-present

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 16, 2005**

P.C.:

. A scheme of amalgamation has been proposed by the Petitioner-company, Dicitex Synthetics Private Limited, which is the transferor Company. A partnership firm known as Dicitex Embroidery exports was set up on 16.9.1998. This partnership firm was registered as a private limited company i.e., the Petitioner herein on 11.3.2005. The appointed date of scheme is 1.4.2004 and the date of incorporation of the transferor company is 11.3.2005. The Official Liquidator has raised an

objection to the scheme by submitting that the incorporation of the transferor company has to be prior to the appointed date.

2. Mr.Singh appearing for the transferor Company points out a judgment in the case of *Bombay Gas Co.Pvt. ltd. v/s. Central Government & Ors.,* **[1997] 89 COMP.CASES 195** wherein this Court considered a case where the incorporation of the transferee company was subsequent to the appointed date. By adopting the reasoning of the Delhi High Court in the case of *HCL Ltd., In re and HCL Hewlett-Packard Ltd., In re* **[1994] 80 Comp Cas. 228**, this Court has held that the appointed date stipulated in the scheme is only for the purpose of identification of assets on the particular date which are to be transferred to the transferee company. Mr.Singh by relying on the judgment submits that the same principles would follow in the case of a transferor company. The chartered accountants while considering the position of the Petitioner company in this case, have stated that they were not able to make any submissions on the legal aspect of the matter as to whether the incorporation of the transferor company after the appointed date would change its position in law.

3. In my opinion, since the appointed date is only specified for quantification and identification of assets, admittedly when the firm was in existence and was running the business from 1.4.2004 till the incorporation of the transferor company on 11.3.2005, there can be no reason to refuse the scheme of amalgamation. The report of the Chartered Accountants also shows that the affairs of the company conducted during the period from 1.4.2004 to 11.3.2005 are not prejudicial to the interests of the shareholders. In my view, therefore, the scheme of amalgamation must be allowed.

4. All statutory requirements have been complied with by the Petitioner. The Regional Director, who is represented in Court and the Official Liquidator, present in Court, have no objection. Hence, the Petition is made absolute in terms of prayer clauses (a) to (g) subject to payment of costs to Regional Director and Official Liquidator quantified at Rs.2,500/- each.

5. All concerned parties including concerned Registrar of Companies to act on the ordinary copy of the order and scheme annexed to the petition, authenticated by the Company Registrar, High Court, Bombay.

6. Filing of drawn up order is dispensed with.